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AIRBASE CONSTRUCTION

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Agreement Between the
UNITED STATES OF AMERICA
and ISRAEL

Signed at Tel Aviv April 6, 1979

NOTE BY THE DEPARTMENT OF STATE

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ISRAEL

Airbase Construction

Agreement signed at Tel Aviv April 6, 1979;
Entered into force April 6, 1979.

Agreement
between the
Government of Israel
and the
Government of the United States of America
concerning
Construction of Airbase Facilities

ARTICLE 1

PURPOSE OF AGREEMENT

The purpose of this agreement is to provide for the construction of two airbases in the vicinity of Ovda and Matred as agreed to by the Government of the United States and the Government of Israel (hereinafter: "The Parties").

ARTICLE 2

FUNDING

Arrangements for funding this agreement are specified in a separate agreement between the parties, to which ~~this agreement~~ is subject.

ARTICLE 3

DESIGNATED AGENCIES AND PROGRAM MANAGER

3.1 For the purpose of implementing this agreement, the United States Department of Defense (hereinafter: "DOD") is the designated agency of the Government of the United States and the Ministry of Defense of Israel (hereinafter: "MOD") is the designated agency of the Government of Israel.

3.2 Each designated agency will identify a responsible official within the designated agency, who will have the authority and responsibility necessary for the purpose of facilitating cooperation between the parties in carrying out this agreement, providing necessary liaison, and promoting the swift resolution of any differences which may arise.

3.3 The responsible DOD official shall be identified as the Program Manager and shall carry out his responsibilities hereunder under the general policy direction of the Chief of the United States Diplomatic Mission to Israel.

ARTICLE 4

PLAN OF WORK

4.1 The designated agencies will agree on a plan (hereinafter: "The Plan") specifying:

A. Scope of construction of the two airbases (hereinafter: "The Work")

B. Criteria and design

C. Time sequence schedules

D. Cost estimates

E. Work breakdown structure for management and budget and quality control

F. Procedures for cooperation between the designated agencies in the execution of the work.

4.2 The designated agencies will exert their best efforts to reach agreement on the plan within forty-five (45) days following signature of this agreement.

4.3 The work shall be divided into two categories:

A. That part of the work required for initial operational capability (hereinafter: "IOC"), which for the purpose of this agreement shall be generally defined as the capability to operate two fighter aircraft squadrons from each base under combat conditions in accordance with Israeli Air Force (hereinafter: "IAF") doctrine and procedures; and

B. That part of the work necessary for normal airbase operations and activities, including but not limited to recreation and community support.

The plan will include a list of facilities in order of priority of completion of construction required to meet the IOC. If the parties agree to the location of an additional squadron at either Ovda or Matred, the construction will be governed by this agreement.

4.4 Criteria and designs used by the MOD at Eitam and Etzion Airbases, adapted to conditions at Ovda and Matred, normally will be used, or other criteria and designs as mutually agreed. Any deviations from the Eitam and Etzion criteria and designs must not delay the accomplishment of IOC. For any facilities which the IAF does not require to be completed for accomplishment of IOC, including any facilities which may be removed from the original list of IOC facilities, the DOD will give primary consideration to the operational requirements of the IAF. Consistent with the requirements of the time sequence schedules, each designated agency will be afforded the opportunity to review, comment upon, and approve designs not originated by it prior to release for construction. After commencement of construction, changes

to criteria or the scope of the work adopted in the plan shall be made only in accordance with paragraph 5.8.

4.5 The time sequence schedules shall provide for completion of that part of the work required for IOC prior to the date agreed for final relocation of Israeli Forces in the Negev. Provision will be made for advance beneficial occupancy of facilities to allow the orderly relocation and operational readiness of the Israeli Forces by such date.

4.6 The cost estimate shall be prepared initially based upon the best available data and shall be updated as better data become available through the completion of designs and construction increments. The cost estimate shall be used as the budget for the project and the basis for the commitment in advance of funds to be provided by the Government of Israel.

ARTICLE 5

EXECUTION OF THE WORK

5.1 The DOD will carry out and manage the work

in accordance with the plan. Any part of the work to be performed by the MOD shall be detailed in the plan and may be performed simultaneously with the work of the DOD, subject to appropriate coordination.

5.2 The DOD is authorized to perform in Israel all acts necessary to carry out and manage the work, including funds management and administration, engineering, construction, and program management. The DOD may establish, in coordination with the MOD, such offices in Israel as it considers necessary for the purpose of performing its functions under this agreement.

5.3 The parties agree to share responsibility to assure the completion of all IOC construction prior to the date agreed for final relocation of Israeli Forces in the Negev and to update the plan in accordance with paragraph 5.8 as necessary for this purpose.

5.4 The parties agree to exert their best efforts to assure the completion of all other work per paragraph 4.3 B above within one year of the date of achieving the IOC.

5.5 The designated agencies shall provide all

items, including services, specified in this agreement in accordance with the time sequence schedules in the plan.

5.6 The DOD shall have authority to make decisions regarding the quality of construction and compliance with established criteria for the work. The DOD will give careful consideration to all comments and recommendations of the MOD regarding quality and compliance with criteria and designs. Upon completion of a construction unit, inspection will be made by the designated agencies and the responsible contractor. Prior to certification the MOD shall be afforded the opportunity to invoke the provisions of Article 7 should it so wish. Upon certification by the DOD that a particular construction unit has been completed in accordance with the terms of the contract, responsibility for such unit shall be transferred to the MOD.

5.7 The DOD will provide the MOD, at regular intervals as agreed, reports on the status of accomplishment of the plan, including physical progress and accumulated costs by work breakdown structure.

The designated agencies shall conduct at the same interval a joint review of progress in executing the plan. The DOD will give careful consideration to all comments and recommendations of the MOD and will endeavor to implement them, consistent with the plan.

5.8 If the status of plan accomplishment or the operational requirements of the Israeli Air Force indicate the necessity or desirability of changing the plan, the DOD Program Manager and the MOD responsible official will meet for the purpose of considering possible courses of action which would not delay the accomplishment of IOC beyond the date agreed for final relocation of Israeli Forces in the Negev. Such possible courses of action will include the provision of temporary facilities pending completion of the permanent facilities and the determination by the MOD that the IAF does not require certain facilities for accomplishment of IOC. Any agreed changes will be implemented as soon as practicable, and the plan shall be modified accordingly.

ARTICLE 6

USE OF CONTRACTORS

6.1 The DOD may accomplish the work through contractors of its selection who are nationals of countries having diplomatic relations with

Israel and shall perform the work in accordance with pertinent United States laws and regulations, including DOD contracting and fiscal procedures. Should DOD perform any part of the work through Israeli contractors, it will, when feasible and when permissible under United States laws and regulations, utilize provisions of MOD procurement regulations applicable to pricing, control of costs, and other financial aspects.

6.2 Having due regard for the scarcity of resources within Israel and time limitations, DOD and its contractors will meet their personnel and materiel requirements from non-Israeli sources except as provided in this paragraph. At the request of either designated agency, in particular cases to be agreed upon between the agencies, DOD and its contractors will utilize Israeli sources. Guidelines for utilization of Israeli sources shall be agreed upon by DOD and MOD. These guidelines will be based on the criteria of availability, suitability, quality, cost, and timeliness.

ARTICLE 7

RESOLUTION OF DIFFERENCES

If any action taken by either designated agency is not satisfactory to the other, the DOD Program Manager and the MOD responsible official will consult for the purpose of resolving the problem. If the dispute cannot be resolved between the two, it may be referred for resolution by designated senior DOD and MOD officials, with the right by either party to appeal to the Secretary of Defense of the United States and the Minister of Defense of Israel. These consultation procedures shall not be permitted to delay any action required for the accomplishment of IOC prior to the date agreed for final relocation of Israeli Forces in the Negev.

ARTICLE 8

OBLIGATIONS OF THE GOVERNMENT OF ISRAEL

8.1 The Government of Israel will exert its best efforts to assist the Government of the United States in the fulfillment of its responsibilities under this agreement, in order to facilitate and assure the efficient, economical, and timely

implementation of this agreement.

8.2 The Government of Israel shall acquire and furnish, without cost to the Government of the United States or its contractors, and in accordance with the time sequence schedules for construction, all land, rights of way, and easements necessary for the construction of the required facilities, including land for on-site housing and other support facilities for DOD and contractor personnel and their dependents. The Government of Israel will maintain and improve, as determined to be necessary by DOD and MOD, all existing roads to and from the construction sites and support facilities, it being understood that this obligation does not include access roads which will be constructed as part of the work.

8.3 The Government of Israel shall assure the availability of adequate port and freight handling facilities for the processing, forwarding and storage of materials, equipment and supplies for the work. The Government of Israel shall ensure that such materials, equipment and supplies receive

priority and expeditious treatment. Both governments shall exert their best efforts to prevent interruption in such treatment by strikes, labor unrest, or other causes.

8.4 The Government of Israel shall establish a central authority to assist the DOD, its contractors, DOD and contractor personnel and their dependents with customs clearances, exit and entry procedures, and all other matters related to activities covered by this agreement. The Government of Israel shall honor vehicle operating licenses issued by appropriate authorities of the Government of the United States or any subdivision thereof, including the DOD, and shall waive work permit requirements for all DOD and contractor personnel.

8.5 The Government of Israel will provide to the construction sites and support facilities, without charge to the Government of the United States, in a timely fashion and in sufficient quantities, all utilities, including water, sanitation facilities, electricity, telephone and communication services.

If the Government of Israel is unable to provide sufficient water, the work will be enlarged and DOD will make necessary connections to available sources or drill for, store, and operate its own water supply. Similarly, if adequate sanitation facilities are not available, such facilities will be included in the work and DOD will arrange for and operate a liquid and solid sanitary and general waste disposal system. Electricity will also be provided by DOD if not otherwise available. MOD will advise DOD of any of these requirements in sufficient time to allow inclusion in appropriate contracts and importation of needed equipment and materials.

8.6 The Government of Israel shall exert its best efforts to ensure that materials, equipment, supplies and services, including transportation and use of port unloading facilities, purchased by the DOD or its contractors in Israel to carry out their functions under this agreement, are furnished on a priority basis and at the lowest possible price.

ARTICLE 9

SECURITY

9.1 The protection of the construction sites and the support facilities from external threats will be the responsibility of the MOD. The responsibilities for internal physical security of the construction sites and support facilities will be agreed between the DOD and the MOD. Upon any part of an airbase becoming operational, the MOD may impose additional security measures with respect to such part of the base.

9.2 In the event of hostilities, civil disturbance, or natural disaster, the Government of Israel shall use all reasonable means, including evacuation, if necessary, to assure the safety of DOD and contractor personnel and their dependents, together with the safety of their personal property.

9.3 DOD personnel will have United States security clearances equivalent to those required by the Government of Israel for MOD personnel in similar positions.

9.4 Each party will respect the other party's security regulations and will accord to the other party's classified information protection under

its own security regulations equivalent to that required by the originating party's security regulations. Distribution of classified information among persons with appropriate security clearances will be under the principle of "need to know".

9.5 DOD shall assure that contractors and their personnel are advised of all security measures applicable to them. DOD shall report to MOD any security violations which involve Israeli classified information.

ARTICLE 10

DOD ACTIVITIES

10.1 Except as provided in this agreement, the DOD shall exercise full administrative and operational control over activities at construction sites and support facilities.

10.2 For purposes of this agreement, the DOD and its contractors may operate within Israel communications systems, including radio, for communication within and without Israel. The Government of Israel shall allocate necessary frequencies.

10.3 The DOD and its contractors may operate ships and aircraft into, within, and out of Israel in connection with the implementation of this agreement. Such operations will be conducted in accordance with maritime and air traffic regulations of Israel generally applicable. The use of ports and airports by such ships and aircraft shall be free of all taxes, tolls, landing fees and other charges, except charges for actual services requested and received. In the event that the Government of Israel is unable to provide an exemption from a particular tax, fee, or similar charge, the MOD shall bear the cost involved.

10.4 The DOD and its contractors may bring into Israel nationals of the United States and third countries having diplomatic relations with Israel for employment in carrying out the work, without utilizing Israeli hiring hall procedures. The Government of Israel reserves the right, on the grounds of security and public order, to limit access to designated security areas and to refuse entry into and to require departure from Israel of specified individuals, in accordance with

Israeli law and practice. DOD and MOD shall agree on the nature of information to be provided the Government of Israel concerning the backgrounds of third country national employees in order to determine their eligibility for admission into Israel.

10.5 The Government of the United States may establish for the exclusive use of DOD and contractor personnel and their dependents those on-site support facilities which may be required for housing, health and welfare, including military postal and American or Israeli banking facilities. The MOD shall assist DOD in obtaining the approval of the Bank of Israel for the establishment of any banking facilities. The activities of such facilities shall be regulated exclusively by the DOD, which shall assure their proper use.

10.6 All salaries of DOD and contractor personnel in Israel may be paid in U.S. dollars, and DOD, its contractors and their personnel shall be exempt from restrictions on movement of currency into or out of Israel.

10.7 DOD and contractor personnel shall be exempt from the laws and regulations of the Government of Israel with respect to terms and conditions of employment, including restrictions on hours per day, hours per week, or days of the week that personnel may perform work.

ARTICLE 11

PRIVILEGES AND IMMUNITIES

11.1 Within the meaning of this agreement, "DOD Personnel" means military members of the United States Armed Forces and civilian employees of the United States Department of Defense. "Dependents" of DOD personnel means members of the families of DOD personnel forming part of their households.

11.2 DOD personnel and their dependents shall be accorded privileges and immunities no less than those accorded to members of the administrative and technical staff of the United States Diplomatic Mission in Israel.

11.3 All property of the DOD and its personnel shall be immune from attachment and seizure.

The Government of Israel shall exert its best efforts to prevent attachment or seizure of any property of DOD contractors whenever such attachment or seizure is likely to impede or delay completion of the work.

11.4 A All property and services imported into or procured in Israel by the DOD or its contractors for the implementation of this agreement, including property and services imported or purchased in Israel by DOD or its contractors for the support of DOD and contractor personnel and their dependents, shall be exempt from all duties, taxes, fees, bonds, deposits, other charges, or license or registration requirements. If necessary, rebate or reimbursement may be used to give effect to these exemptions.

11.4 B Without prejudice to para 11.2 above, household goods and personal effects imported for their personal use by DOD or contractor personnel and their dependents within six months of their first arrival in Israel for

permanent duty shall be entitled to the same exemptions provided in subparagraph 11.4 A above.

11.4 C Exemptions from import duties, however, shall be available only for directly imported items and shall not extend to imported items purchased from Israeli sources.

11.5 Non-military vehicles for use off the project sites or on public thoroughfares will be licensed, but without charge; military vehicles need not be licensed, but shall have appropriate identification markings. Key personnel of DOD contractors from the United States who have duties requiring the use of a motor vehicle in Israel off the project sites shall be issued the same fuel tax exemption coupons, through the United States Embassy, as are issued to Embassy personnel. Tax-free fuel for vehicles used only on the sites will be available only at the sites. Notwithstanding the foregoing, tax refunds for diesel fuel will be available regardless of where the fuel is obtained.

11.6 All personal or moveable property of DOD, its contractors, the personnel of both, and their dependents may at any time be removed from or disposed of in Israel free of any restrictions or charges, provided that the duty thereon shall be paid in the event of their sale or disposal in Israel to a person not enjoying duty-free import privileges.

11.7 The activities, income and transactions of the DOD and its contractors in Israel in connection with this agreement, including those of the service facilities established under paragraph 10.5 above, shall be exempt from all Israeli duties, taxes, fees, bonds, deposits, other charges or license or registration requirements. Notwithstanding the foregoing, corporations from third countries which are selected as DOD contractors shall be subject to Israeli corporate income taxes on their profits arising from activities in Israel under the DOD contract at a rate not to exceed 25% of such profits. If the corporate income tax rate in the home country of such a corporation is less than 25%, then the lesser rate

shall apply. If any part of Israeli income taxes on such profit is not given full tax credit in the home country of the corporation, then such part of Israeli income taxes shall be exempted or refunded by the Government of Israel. If, notwithstanding the foregoing, Israeli income taxes are found to have been included in the contract price to DOD, the MOD shall either pay such taxes directly or reimburse the DOD or the contractor, as the case may be.

11.8 The income of DOD and contractor personnel shall be exempt from all Israeli taxes, fees or other charges.

11.9 The privileges granted by this article are not available to persons normally resident within Israel or to third country corporations controlled by Israeli residents, or with respect to income derived from sources in Israel not associated with the performance of this agreement.

11.10 Administrative arrangements will be agreed between the parties establishing procedures for

facilitating the obtaining of exemptions from taxes, duties, charges, and other requirements provided in this article, while preventing abuses of these privileges. The arrangements will also include reasonable limitations on the number of items imported duty free by individuals to assure that such items are imported only for their personal use.

ARTICLE 12

CLAIMS

12.1 Each party waives all claims against the other party and its personnel for damage or loss of any kind to any property owned by it and arising in connection with activities covered by this agreement. Unless covered by the compulsory liaibility insurance referred to in paragraph 12.4 below, the waiver of such claims by the Government of Israel also extends to DOD contractors and their personnel.

12.2 Unless otherwise provided by this agreement or covered by insurance of the MOD, claims arising out of acts or omissions of DOD personnel done in

the performance of this agreement and causing damage to third parties in Israel or territories administered by Israel shall be settled by the appropriate authorities of Israel in accordance with the laws and regulations of Israel applicable to claims arising from activities of members of the Armed Forces of Israel. Any amount paid in settlement of claims under this paragraph shall be shared equally by the two governments.

12.3 Unless otherwise provided by this agreement, claims not covered by liaibility insurance which arise out of acts or omissions of DOD personnel not done in the performance of this agreement, for damage to third parties in Israel or territories administered by Israel, may be submitted to the DOD for consideration under United States foreign claims settlement procedures.

12.4 The privately owned motor vehicles of DOD and contractor personnel and their dependents shall be subject to the compulsory liaibility insurance law of Israel. The MOD shall pay directly or reimburse the premium or other charge for such insurance for vehicles owned by the DOD or its contractors.

ARTICLE 13

ENTRY INTO FORCE

13.1 This agreement shall enter into force upon signature by the parties.

13.2 This agreement shall remain in force until four years from the date of entry into force of the treaty of peace between Israel and Egypt, except that it shall continue in force beyond that time if necessary for the purpose of completing activities under it, for closing out contracts awarded pursuant to it or claims which might arise in connection with it, or for such additional periods mutually agreed by the parties.

ARTICLE 14

AMENDMENT

This agreement may be amended at any time by agreement of the parties.

[1] Date April 6, 1979

[2] Date 6 April 1979

[1] David E. McGiffert.
[2] J. Weizman.

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